A COMPARISON OF STATE OPEN-MEETING LAWS

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PREFACE

More than two hundred years ago, the idea of open government and an informed public led our founding fathers to a revolutionary concept--government built on the foundation of free speech and a free press. That concept--both a principle and an ideal throughout the history of our country--has been both the mainstay of our freedom and an elusive goal never quite within our reach.

As our nation progressed from frontier to industrialized and then to high-tech society, the paradox endured. Even now, the growth of big government and the explosion of knowledge in a computer-based world have not altered our historic need to nurture freedom of information. That need remains unchanged. What has changed are the situations we now must confront to protect those freedoms. Today, freedom of information means not only the free circulation of information, but also--and sometimes even more importantly--free access to information.

During the mid-'70s, access to information became an issue of increasing public interest which culminated in the passage of state and federal legislation increasing access to governmental information. Since that time, public interest and legislative activity have declined in an atmosphere of national conservativism and political disinterest. What concern there is now has been brought forward for the most part by journalists. A recent publication of the Society of Professional Journalists, 1984-85 Freedom of Information Report--Gaining Access (not

available in time for inclusion in this thesis) summarized major freedom of information issues and included a state-by-state survey of open meetings and records.

Regardless of the degree of public awareness or the strength of political support, freedom-of-information issues exist today. An awareness of these issues and their importance led the writer to undertake this thesis, which examines the current status of the freedom-of-information movement by scrutinizing access--access to one major source of information about state and local government: open meetings. The study sought to determine the effectiveness of today's open-meeting laws, and gauge the progress of open-meeting legislation over the past 10-years.

While open-meeting laws constitute a substantive legal topic, empirical research was chosen as the appropriate research design for this thesis. A paradigm selected for comparative analysis of the laws allowed the legal research to be presented through the sociological methodology of mass communication research. The study provides an overview of current state open-meeting laws and a method of comparing the 50 state laws with each other and with state laws as they were written 10 years ago.

This study could not have been completed without the help of many. I would particularly acknowledge my thesis adviser, Dr. Harry E. Heath Jr., and thank him for his guidance in the selection and development of this research. And thanks go, too, to the other members of my committee--to Dr. William R. Steng for his assistance and Dr. Walter J. Ward, for his knowledge of research design and its application to the social sciences.

I wish to express appreciation to Edward Hollman, head of the Social Sciences Division of the Oklahoma State University Library, for his assistance with legal research, and to the staff of the Oklahoma State Department of Libraries, Legal Division, for their tireless efforts in locating statutory citations for this research. To Jone Hawkins, thanks are extended for her work in the completion of the final manuscript.

I also am indebted to my mother, Anna Belle Hartin, and to my aunt, Pearl Hambleton, both of whom continue to teach me, and to my father, the late Joseph Hartin, and my uncle, the late Russell Hambleton, whose memories gave me encouragement. And, finally, to my husband, Richard, and my children for their love and generous support throughout my graduate study.

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CHAPTER I

INTRODUCTION

Public access to the governmental decision-making process has long been a goal of the press. Together with individuals and various groups representing the public, the press has sought open-meeting legislation in each state as one important means of achieving this goal.

Because an informed electorate is essential to a representative democracy, public awareness of--and participation in--government is vital. Thus the reporting of public business completely and accurately is a basic need, and media access to governmental decision-making is fundamental to American democracy. James Madison expressed the philosophy in these terms:

> Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both.[1]

With Madison's philosophy as a focal point, this thesis will discuss the development of state open-meeting legislation and outline major analytical studies regarding the legislation. A survey of the current status of open-meeting legislation will be presented by comparative categorization.

Development of the Open-Government Concept

Although the theory of open government has been present since the nation's inception, the practice of government openly conducted has been a long struggle--a struggle begun in England and brought to America with the earliest colonial settlements.

Secret legislative proceedings were practiced in both houses of British Parliament. The original reason for secrecy was fear of reprisal from the Crown for statements made during floor debate.[2] This fear subsided during the late 17th Century, but members continued to meet in private in order to withhold information on debates and votes from their constituents.[3] As time passed, enforcement of the secrecy resolutions was relaxed and it became custom to admit the public and press to Parliament. Today Parliament encourages rather than suppresses public attendance and the reporting of its proceedings. Nevertheless, "the public has no common-law right to attend meetings of government bodies."[4] The gradual evolution from closed to more open sessions of Parliament, instead, represents a matter of Parliament's grace plus long-standing custom.

In Colonial America, English rulers followed the precedent of legislative secrecy practiced by the 18th Century Parliament. Whether operating under trading charters or royal governors, colonial legislatures excluded newsmen from, and barred publication of, their proceedings. Some relaxation of secrecy rules came with the Revolution. Indeed, the struggle for press freedom was one of the objectives of the Revolution itself.[5]

Freedom of the press was a major concern in the formation of the American Republic. The adoption of the Constitution and the Bill of

Rights guaranteed press freedom, and while it is clear that the freedom of the press guarantee was intended to prohibit prior restraints by [government on the press], there is no foundation for the belief that right of access to government was specifically in the minds of those who drafted and approved the First Amendment.[6] It is in recent years that the guarantee began to imply to many constitutional theorists the right of public access to government and the right of the press to gather information about government. The primary purpose of the freedom of speech and press clause of the First Amendment, to these theorists, has been "to prevent the government from interfering with the communication of facts and views about governmental affairs."[7] The theory is extended by the belief that the First Amendment clause, together with support from the Fifth, Ninth and Fourteenth Amendments, guarantees the people's "right to know" and thus access to governmental meetings. This viewpoint was strengthened by a 1945 Supreme Court opinion in which Justice Black, with Justice Frankfurter offering a concurring opinion, recognized that informing the public is an important interest underlying the guarantees of the First Amendment.[8] Regardless of support for the theory, however, the Supreme Court "has not expressly recognized a broad individual right to gather information from an unwilling government entity."[9] Therefore, neither in the past nor present has there been any specific Constitutional guarantee of right to access.

Apart from legal development of the concept of free speech and freedom of the press, the attitude of public opinion in 18th Century America was not consistently favorable to open government. There were those early Americans who fully adopted a viewpoint favorable to secrecy

in government. The planning and development of the federal government was conducted in secret at the Constitutional Convention. Moreover, the initial meeting of Congress (1788 Constitution) in March of 1789 was held with the Senate behind closed doors while the House of Representatives met in public.[10] It was not until 1794 that the Senate opened its doors to the public.[11]

Although there was lack of full public and official support for open government, "historical research indicates that the early Republic was characterized by a general openness of information."[12] The early Republic also was characterized by government of limited organizational structure. In 1789, during Washington's first administration, the entire executive branch consisted of the departments of State, War and Treasury. In addition, there was an attorney-general and a fledgling post office.[13] Aside from secret diplomatic correspondence, access to information about the State Department--which during that period had a total personnel force of less than six--did not present a great problem.[14]

The Growth of Big Government

The problem of government secrecy accompanied the rise of "big government" beginning in the 1930s and expanded to both foreign and domestic security considerations during the post-World War II period.[15] Prior to the post-war period, the custom of and tolerance for openness in government was nurtured by a climate of favorable public opinion and backed by legal precedent. The legal right to attend meetings developed historically as a constitutional and legislative right exercised primarily by state government.[16] Following the precedent set by Congress early in the nation's history, state governments have allowed the public

to observe legislative sessions. Before 1953, two states had constitutional provisions specifically requiring their legislatures to have all meetings open to the public, and many states had constitutional provisions permitting public attendance except in certain circumstances.[17] In addition, Alabama has had legislation requiring open meetings of state administrative agencies since 1915,[18] and most city charters in all states were written requiring open meetings of city councils and similar governing bodies.[19]

The gains toward open government made during the 19th and early 20th Centuries had, however, by the mid-1950s begun to erode and a tendency toward secrecy was witnessed at all levels of government--local, state and federal.[20]

After three centuries of progress toward openness in government, there seemed to be--paralleling the rise of the modern, urbanized, industrialized society--a reversal, a regression from openness. This developed as a result of complex and fundamental changes. One author offered this explanation:

> Retrogression has been caused by military crisis, by changes in the structure of government, by expansion in the powers of government, by increases in the sheer size of government and by declining faith in the theories that made it possible to expand popular rights to knowledge from the seventeenth to the twentieth century.[21]

Further, it was thought by many that the evolution of modern government had, itself, impaired the right of access. These elements of governmental structure were said to be restrictive of access to government:

1. Delegation of legislative power to executive departments and independent agencies.

2. Emigration of legislative business from legislative chambers to legislative committees, at federal and at state levels.

3. Increase of secret sessions at local levels of government.[22]

The Right to Know

Concerned citizens and the press began to feel a need to know about their government. This growing sentiment was expressed by Kent Cooper, executive director of the Associated Press, as "the right to know." In a speech given January 23, 1945, he argued: "The citizen is entitled to have access to news, fully and accurately presented. There cannot be political freedom in one country, or in the world, without respect for 'the right to know.'"[23] The phrase became widely used by the media in editorials and other efforts directed toward openness in government. Later, in a book, The Right to Know, Cooper argued for the adoption of a constitutional amendment to clarify the First Amendment and guarantee the right to know.

Organized activities to promote the right to know had their beginnings in 1950 when the Freedom of Information Committee of the American Society of Newspaper Editors directed its attention to the problem of access to government.[24] Among other activities, the Committee sponsored a study by Harold L. Cross, a newspaper attorney and lecturer at Columbia University. The result was a book entitled The People's Right to Know. In the book, Cross defined the problem of access and discussed the need for action at both the state and national level.[25]

Russell Wiggins, executive editor of the Washington Post and Times Herald and a chairman of the Freedom of Information Committee, sought to explain and further clarify the "right to know" principle in Freedom or

Secrecy, published in 1956. Wiggins argued that the right to know was actually several different rights:

1. The right to get information.
2. The right to print without prior restraint.
3. The right to print without fear of reprisal not under due process.
4. The right of access to facilities and material essential to communication.
5. The right to distribute information without interference by government acting under law or by citizens acting in defiance of the law.[26]

Wiggins's composite of rights re-enforced the need for open access to governmental proceedings.

The growing concern for open access to government was not met without political controversy. Because there was no apparent constitutional basis, defending open access as a right under the First Amendment was difficult. In addition to the problem of constitutional justification, there were those individuals and groups who opposed the principle. Their concern dealt with the balance of different, unrelated rights, those of privacy and the general public good, with the right to know. Because the "right" appeared "unconditional and unqualified it was, therefore, unacceptable."[27]

Nevertheless, despite political conflict, the public's right to know and, with it, the movement toward open access to government proceedings, expanded to include individuals, citizens' groups, and all of the professional journalistic organizations.[28] In 1957, the American Society of Newspaper Editors extended the pioneering efforts begun by the Freedom of Information Committee by legitimatizing the right to know

in "A Declaration of Principles." This document embodied the basic principles surrounding the right to know.[29]

As the general campaign for the right to know developed, the movement toward open-meeting legislation also began to grow. In 1957, the same year the American Society of Newspaper Editors issued "A Declaration of Principles," Sigma Delta Chi, now called The Society of Professional Journalists, "began a concentrated effort for adoption of model access legislation in states without such statutes."[30] To aid the passage of strong open-meeting legislation, the Society created a model law.

In 1957, only 11 states had laws requiring that meetings of governmental bodies be open to the public.[31]

The following year, a Freedom of Information Center was opened at the University of Missouri School of Journalism. The Center, through a Freedom of Information Foundation, published yearly reports on the status of the freedom-of-information movement and scholarly research concerning the subject.[32]

Common Cause, a national citizens' lobbying group, also became active in working toward right-to-know legislation. The group drafted its own model legislation and a statement of principles concerning open-meeting laws.[33] Credit for building the need for more openness in government also can be given the Associated Press Managing Editors, the National Editorial Association, and state press associations, which have engaged in numerous educational campaigns concerning the right to know.[34]

These groups and other proponents of right-to-know legislation offered several arguments to educate the public to the need for

open-meeting laws. The basic argument was: public knowledge of governmental action is essential to the democratic process; under the American democratic system, the people must be informed of government in order to make intelligent judgments on issues and intelligent selection of their representatives.[35]

Several correlates to this principle were offered to support the need for open meetings, including the invaluable aid of outside observers in ensuring that information is passed to the public. Official reports, it was argued, seldom furnish a complete summary of discussion. The press and interested citizens present at meetings could ensure wider and more accurate dissemination of information.[36] In addition, "where the public is able to witness the deliberations which lead to the expenditures of large sums of tax dollars, the misappropriation of funds either by imprudence or dishonesty can be best controlled."[37] Conversely, honest lawmakers would be protected from false accusations if proceedings were conducted in a completely open forum.[38] Further, since open meetings would permit immediate feedback of public reaction to official action, the meetings were thought to make government more responsive to the public.[39] Finally, public meetings were said to foster a better understanding of the demands of government and the significance of particular issues, thus eliminating misconceptions the public might have about government.[40]

On the other hand, those who opposed open-meeting legislation included government officials who feared open meetings would be detrimental. They thought official actions would be misrepresented by the press, or "even distorted by newsmen in the drive to 'merchandise' the news."[41] Some officials were reluctant to speak at open meetings and

were opposed to them because they feared their unrehearsed speech would make them appear foolish in public.[42] Another disadvantage cited was that the open-meeting requirement would tend to publicize disagreements.[43] Regarding meetings involved with cases of conflict of interest, one public official remarked that "there are many details, ramifications and opinions that no sound administrator . . . would care to express in public."[44]

Still others, outside government, opposed the legislation. They felt that open meetings provided a stage for public officials to grandstand for their constituents.[45] Even among those in the media, some were reluctant to give support because they believed weak laws would be worse than having no laws at all.[46] Some newspersons also charged that the laws provided excuses for secrecy. Robert H. Wills, city editor of the Milwaukee Sentinel, thought that Wisconsin's 1959 open-meetings law had done more harm than good. Before the law went into effect, he could walk into a meeting as a reporter and "nobody could throw a law book at me," he said.[47] Despite arguments of the opposition, the benefits of open meetings were generally recognized.[48] By 1962, 26 states had passed laws requiring open meetings.[49] The remaining states moved to enact similar laws and in 1976, New York and Rhode Island became the last to adopt open-meeting laws.[50]

During the mid-1970s, two events, Vietnam and Watergate, focused unprecedented press and public attention on misuse of power and governmental secrecy at the federal level.[51] Measures were taken to correct this abuse of public trust when President Gerald Ford signed into law the Government in Sunshine Act. Although the law, enacted in 1976, lists 10 exceptions, it does provide for open meetings of most federal

agencies.[52] Dramatic changes in open-meeting legislation were observed throughout the United States at this time. Many state open-meeting laws were "either adopted or extensively revised at about the time the federal law was enacted."[53] The National Conference of State Legislatures considered open meetings a topic revelant to state legislative ethics and drafted a model open-meeting law which was adopted as suggested legislation at the group's Philadelphia meeting in 1975.[54] Laws passed after the mid-1970s have resembled the federal law and the National Conference of State Legislatures model law in many respects.

Achieving Balance--The Florida and Tennessee Acts

Open-meeting legislation in general has come to be identified by a popular "catch-all" term, Sunshine Law. The title was derived from the lengthy Florida government-in-the-sunshine deliberations, an influential example of effective law making.[55] The Florida Sunshine Act, passed only after 10 years of debate in the Florida state legislature, is exceptionally broad in coverage. Prior to its enactment, several attempts were made during Florida House debates to write exceptions into the bill, but none succeeded.[56] The law was passed prohibiting executive sessions; it declared a policy of openness subject only to any exceptions found in the Florida Constitution. In 1973, the law was called the strongest statement to date in the field of open-meeting legislation.[57] Numerous court cases have been brought against the statute, yet Florida's Sunshine Act remains, in terms of comprehensive coverage, one of the broadest state open-meeting laws.[58]

One other state, Tennessee, has passed open-meeting legislation with sweeping coverage. It is the only state whose law has the

distinction of being recognized as "model."[59] The Tennessee law alone earned a perfect score in a 1974 nationwide study conducted by John B. Adams, dean of the School of Journalism at the University of North Carolina.[60]

In this comparative test of comprehensiveness in state open-meeting legislation, Adams rated states on 11 criteria that he developed to describe an ideal law. The scores revealed a wide variation in comprehensiveness of open-meeting laws. Only two states were reported not to have any sort of open meeting law at the time of the survey, but several others had laws which met only one or a few of the criteria suggested. Laws in Arizona, Kentucky and Colorado received a 10 and those in Maine and Minnesota earned a nine.[61] Among the 11 criteria, Adams's ideal law included provision for an open legislature and open legislative committees as well as open meetings of state, county and local agencies. The criteria also included a statement of policy, sanctions against violators of the law, and prohibition of closed executive sessions.[62]

Adams's report, published by the Freedom of Information Foundation, was reviewed and circulated widely.[63] Yet despite this national attention, neither the report nor the Tennessee law met with universal approval. Douglas Wickham, a University of Tennessee professor of law, was an outspoken critic. Wickham pointed out a number of deficiencies in the Tennessee law and recommended corrections in a Tennessee Law Review article. He suggested that open-meeting laws should address the "reconciliation of serious value conflicts."[64] These value conflicts, in Wickham's view, should not be characterized as "'the right to know' versus the right to secrecy."[65] "In reality," he said, "the tension is between the value of having an informed electorate and the value of

preserving the quality of governmental decisions through insulation from unnecessary public exposure."[66] He argued that in some instances the general public welfare and the individual's right to privacy were violated by open-meetings legislation. Wickham presented these guidelines to accommodate the conflicting values:

1. A presumption in favor of public access to governmental meetings;
2. A delineation of those situations in which open meetings are not preferred, and
3. Enforcement through meaningful and appropriate sanctions.[67]

Among the situations in which open meetings were not considered by Wickham to be beneficial were labor negotiations, investigatory proceedings, discussions between a public body and its attorney and personnel matters dealing with hiring, compensation, promotion, discipline and dismissal.[68]

The Tennessee open-meeting law, in its vast breadth of coverage, had opened virtually all aspects of governmental meetings to the public. Wickham believed that in protecting the public's right to know the law infringed on other rights.[69] The principles he developed sought to balance the conflicts encountered in drafting open-meetings legislation.

The controversy surrounding the 1974 Tennessee law was representative of the dilemma encountered by legislators throughout the country as they wrestled with open-meeting legislation. "Although many states . . . sought a common ground, no particular statute stands apart as a successful resolution of the conflict in basic values."[70] "Accommodating the valid interest in secrecy, for the consideration of certain subject matter or for preliminary fact gathering and consultation, while preserving the informative values of open discussion" was a serious

problem.[71]

The broad and comprehensive laws enacted in Tennessee and Florida emphasize the value of openness. Legislation in other states placed more emphasis on "values which require a degree of confidentiality."[72] As a result, open-meeting statutes in the 50 states "vary considerably in range and effectiveness. At one end of the spectrum there are laws which, by intent at least, require [government] . . . in a fish bowl. At the other end lie those laws which . . . [are] charters for secrecy by reason of the exceptions and qualifications incorporated into the statutory text."[73]

The Range and Effectiveness of Open-Meetings Legislation

Open-meeting statutes have varied considerably in range and effectiveness, due in part to the inherent difficulties encountered in attempting to balance conflicting values. The variation in effectiveness also has been due to other reasons. A 1962 study cited "poor draftsmanship, resulting in ambiguities and incompleteness in many statutes" and "inadequate statutory treatment of executive sessions."[74] Another study, in 1973, reaffirmed the lack of "uniformity or draftsmanship" in the laws.[75]

Many journalists and other interested citizens who welcomed the idea of open meetings began to regard the resulting legislation as less than desirable. In one study, two out of three editors reported one or more instances during a year's time in which a reporter had been denied access to public records or public meetings.[76] Another study surveyed 40 South Dakota journalists and found 49 percent suspected the governmental entity they covered of conducting closed meetings in defiance of

the law.[77] In Virginia, journalists found "many local governments utilizing the legal exemption and personnel exemption to evade their responsibility for open meetings under the law."[78]

Clearly there has been a vast difference between the intent and the application of open-meeting laws. The flaws, hindering implementation, provided opportunity for deliberate manipulation of the statutes. For instance, the 1974 Virginia law could be successfully side-stepped. According to an attorney general's ruling, the appointment of one additional person to a commission or board could permit a reclassification of definition, thus allowing a closed or secret meeting.[79] Further examples can be found in the files of the University of Missouri's Freedom of Information Center which are "crammed with case histories of local secrecy problems."[80]

While broad coverage has come to be accepted as a prerequisite to effective legislation, broad coverage without clarity of definition and explicit directive can create troublesome ambiguities. In Arkansas during the 10-year period between 1969 and 1979 seven Supreme Court decisions, numerous circuit court actions and more than 60 attorney general's opinions involved open-meeting legislation.[81] The Arkansas statute is only one example of an open-meeting law that has undergone extensive judicial review. The basis for valuable open-meeting legislation rests not only with broad scope but also with narrow definition.[82]

Over the years, the most serious complaints regarding ambiguity in open-meeting legislation have concerned executive, or closed, sessions of public bodies.[83] In Montana, for example, an executive session may be held at any time the "demand of individual privacy clearly exceeds the merits of public disclosures." However, privacy may be waived by

the individual about whom the discussion pertains.[84] Other serious complaints have been directed at the numerous exceptions found in the laws. The state of Delaware lists 13 separate exceptions to the open-meeting requirement.[85] The National Association of Attorneys General has prepared a 135-page book dealing solely with exceptions to open-meeting laws--further evidence of the problem's magnitude.[86]

Recurring problems rise from inadequate definition of the word "meeting." Whether or not informal meetings, subcommittee meetings, meetings of quasi-judicial bodies, party caucuses, private and non-profit organizations that receive state funds, advisory bodies, university faculties, state legislatures, social functions and other circumstances are covered in the legislation varies from state to state.[87]

Further problems stem from inadequate definitions. In some states, a quorum is necessary to constitute a meeting. In others, such as Florida, any action which is deliberated or taken qualifies as a meeting.[88] In a few states, officials are free to close meetings for all purposes except taking a final vote.[89]

Unless the media and public are informed of meeting times and locations, the requirement of open meetings is virtually worthless.[90] "Most states require publication of regular meeting times and places, and require notice of special meetings as well."[91] A few, like Colorado and New Mexico, require only that "'full and timely' or 'reasonable'" notice be given.[92]

Since it is virtually impossible for the press and public to attend every meeting of every public body covered under open-meeting acts, recorded minutes available to the public are an important adjunct to this legislation, even though several states still do not require minutes.

Of the states that require minutes of regular meetings, some exclude the recording of minutes of executive sessions.[93]

Obtaining enforcement of violations is a major factor hampering the effectiveness of the laws.[94] Not all states allow procedures for a general appeal to the courts for injunction to prevent officials from excluding the public.[95] Invalidation of action taken at a meeting held in violation of an open-meeting law is provided for in some state laws.[96] Penalties for violations vary considerably from state to state.[97] Misdemeanor is a typical penalty. At one time during the 1960s, four states authorized removal from office as a penalty.[98] The New Hampshire and North Carolina laws require injunction but no penalties.[99] Provisions that allow any citizen to sue to enforce the law strengthen enforcement sanctions.[100]

Aside from legal means, journalists have successfully used a variety of strategems--editorials, letters to members of the public body, photos of the closed door behind which the closed meeting is being held, and the threat of lawsuit to open meetings that otherwise would have been closed.[101] The time and costs involved in litigation have prevented many journalists and individual citizens from seeking enforcement.[102]

The goal of open-meeting legislation in each state was long sought by journalists and a few citizen groups. Once achieved, however, the legislation often has been met with mixed emotions. While most of those concerned with the free flow of information have welcomed the basic principle of the legislation, many have found implementation of the laws somewhat frustrating. This ineffectiveness stems partly from the difficulty of balancing the need for confidentiality and the need for open access.

Basic Content of the Laws

There is, presently, still a great deal of legislative activity updating the laws in many states. Furthermore, numerous court cases and attorneys-general opinions lend interpretation to the laws. The wording of two laws may be almost identical, but the interpretation of those laws may differ greatly from state to state. Even within a state, interpretations of the law may vary from case to case.[103] In addition, other legislation and state constitutional requirements affect open-meeting legislation. The general index of the Montana Code Annotated lists 33 separate statutory citations referring to open meetings, in addition to the open-meeting law.[104] Presented with these variables, any comprehensive summary of the 50 state laws would be difficult, if not impossible.

More than a dozen law-review articles analyzing open-meeting legislation have been published since the early 1960s. These articles together with scholarly research that approaches the study of open meetings from a social-science perspective, examples of model legislation drafted by various sources, and the example of the federal law present something approximating a consensus on the general content of such laws. Included in an outline of this content is:

1. A statement of purpose: This is a brief statement of the purpose and intent of the law.[105]

2. Definitions: A formal explanation of what is meant by the terms "meeting," "open" and "action."[106]

3. Coverage: A description of the categories of governmental organizations included in the legislation.[107] Three techniques are generally used: (a) a listing of all affected agencies by name or narrow class, (b) an establishment of criteria broad enough to identify all agencies performing public business and (c) some combination of

(a) and (b).[108] Many times the qualification of whether a governmental body spends tax revenues or is supported by tax revenues is used to determine coverage.[109] Among the many different exceptions listed by the various states, it generally is found that the courts and judicial proceedings are exempted from coverage as are meetings of state legislatures. Most of these are open to the public through means other than open-meeting legislation.[110] Tennessee and Florida are the only states allowing no exceptions for closed, or executive sessions, under the legislation. Many states restrict the subjects of discussion and the method of conducting executive sessions.[111] The model legislation of the National Council of State Legislatures legitimizes executive sessions under five conditions: personnel matters (hiring, firing, promotion and discipline), real estate transactions, collective bargaining strategy sessions, labor negotiations and closed public records.[112]

4. Notice: A statement requiring that information concerning the time and place of meetings be provided the public.[113]

5. Minutes: A statement requiring detailed minutes be recorded and made available to the public.[114]

6. Sanctions: A statement providing for enforcement of the provisions of the law. One or more of the following methods of enforcement have at one time or another been adopted by various states: criminal penalties, invalidation of action taken at a meeting closed in violation of the law, injunctions prohibiting officials from excluding the public and removal of violaters from public office. In the past, a few states have had no enforcement measures.[115] In many states any citizen can bring suit to force compliance with the law.[116]

The provisions above are merely generalizations, covering only the major aspects of open-meeting legislation. The laws of each state are specific. Many state laws do not include all of the provisions above. Many states have additional provisions not among those listed above. These six provisions, however, represent an extremely broad overview of current law.

Current Status of Open-Meeting Laws

The movement for access to government preceedings has made enormous strides in recent years.[117] Despite the varying scope of coverage from state to state, open-meeting legislation, in general, has been met with favorable response from both journalists and government officials. A study conducted through the University of West Virginia revealed that "both groups believe that open-meeting laws are a good idea."[118] Another study showed that overall, county commissioners and city managers in Michigan supported the idea of open meetings. As time has passed even some critics have been won to the cause. A state representative from Tennessee who opposed the passage of his state's 1974 law changed his opinion. "The nightmares I predicted," he wrote, "have not come to be."[119] Among journalists who favored the legislation was Mary Lee Quinalty, manager of the New Mexico Press Association. Speaking for association members, Quinalty said, "We had some real loopholes before we got [the 1980 law] passed; now, we rarely have a problem."[120]

The historical trend toward open access to government through open-meeting legislation is unmistakable.[121] Openness works.

There is, however, a continuing need for reappraisal of the laws. The concerns of open access are not static. Updating of legislation provides for adaptation to changing needs. Modern technological advances have presented two needs not commonly addressed in current open-meeting legislation. One regards recording and broadcasting of meetings. In several states, including Connecticut and Maryland, open-meeting acts have been written permitting the recording, filming and broadcasting of meetings. These provisions have the potential of greatly widening the scope of public access to government.[122] The other need

presented by technological advancement may not prove as beneficial to open access. An example from one state provides illustration. Illinois has used teleconference calls to conduct meetings of two state boards and other agencies.[123] Robert Ruies, a member of the technological assessment committee of the American Bar Association, has said that "limiting teleconferencing is not likely to happen. The speed . . . makes it a worthwhile venture."[124] Others view teleconferencing as circumventing the spirit of public-access legislation. The state of Oklahoma is one state whose law expressly prohibits public bodies from deciding any action or taking any vote in meetings held by telephonic communication.[125]

The long struggle for open meetings has been successful in terms of general access to governmental bodies. The effectiveness of the legislation as a major weapon against government secrecy is difficult to assess. There is room for improvement. The evidence is ample that "local government carries on much of its business in secret, even in states where laws forbid or restrict the practice. So far, the fight against closed meetings . . . has been waged almost entirely by the more courageous and tough-minded elements of the communication media."[126]

This excerpt was taken in 1984 from an opinion page of a medium-sized newspaper.

> . . . Then came the closed-door session to 'decide' . . . Why not discuss it [hiring a new director] out in the open? What's the big secret? It's a common practice among public bodies to go into executive session when they are discussing the hiring or firing of an official. It creates an aura of mystery. But, that is about all it does. It certainly does not promote public trust.[127]

The editorial is reflective both of secrecy in local government and the

media's continued editorial opposition to that threat.

A further expression of the problems many journalists face in dealing with open-meeting laws has come from Bill Monroe, managing director of the Iowa Press Association.

> [Iowa journalists] are generally pleased with these laws, but find it's a full-time job making sure that the legislature doesn't water them down. We had over 70 newspaper bills in the 1981 legislative session, many of which dealt with freedom of information issues. We've learned that good laws on [open] meetings are essential, but a continuing effort is needed to protect those laws.[128]

The preceeding are indicative of the need for protection of existing legislation, and revision of the laws to meet the changing needs of society.

Oregon legislation offers a unique solution to a recurring issue involving open meetings. The question of balance, exhaustively debated since the inception of open-meeting legislation, has, in Oregon, been answered by a compromise that promises neither the sacrifice of openness nor privacy.

Recognizing that some matters are best dealt with confidentially, yet opposing restrictions to openness, the Oregon legislature voted to allow "representatives of the news media" in closed executive sessions.[129] With the exceptions of deliberations concerning the authority of a labor negotiator or hearings regarding the expulsion of a child from school, the news media may attend all executive sessions covered by the law. Governing bodies can, under the law, restrict what journalists report from such sessions. The law serves two objectives. First, reporters may gather background information. Although they may not use the information in reports, attending closed sessions allows reporters to form a more accurate perspective on later actions taken in public.[130]

Second, "the reporters present serve as 'watchdogs,' ensuring that the governing bodies do not stray into discussions properly held only in public sessions."[131] Allowing newspersons to attend executive sessions establishes a middle ground between complete openness and total secrecy. No other state grants such a privilege.[132]

Legislation in the state of New York provides for a Committee on Open Government, one other uncommon approach to protecting the public's right of access. The committee serves as a monitor of all laws dealing with freedom of information. Its efforts as an advocate, adviser and lobbyist for open government have put New York "among the leaders in these situations."[133] The committee, which has no enforcement powers, does draft reports to the legislature and make recommendations for needed changes in the laws. "Newspaper executives and public officials serve on this Freedom of Information Committee, which grants on request non-binding advisory opinions--500 in one year alone--on matters involving open meetings and other disclosure acts.[134] In Connecticut, a similar provision provides for review of open-government legislation. Connecticut's board has investigative and subpeona powers and power to declare null and void actions by public agencies which violate the open-meeting law.[135] The five-member commission often has members with media background. The first chairman was the late Herbert Brucker, a noted journalist.[136] Speaking about the work of the commission, one member pointed out that "half of the things we resolved in the first year were about provisions that had been on the books since 1957--but there was no commission to enforce them. It was just a few newspapers with the money to go to court."[137]

Since 1976 all 50 states have had open-meeting laws on record.

Some of the problems of government secrecy have been addressed effectively through this legislation. Most meetings of most governmental bodies have been opened under the laws. Problems--primarily those dealing with the balance of wide coverage as opposed to restrictive, and those involving enforcement measures--continue to plague journalists and the public alike. A few states have adopted innovative approaches to resolving these conflicts, but by and large many conflicts remain unresolved.

Summary

The idea of government open to the people developed in England and was brought to this country by early colonists. Freedom of the press was an objective of the American Revolution and a concern of the framers of the Constitution. Although the Constitution and the Bill of Rights do not explicitly guarantee freedom of access, many believe that it is implied in the First Amendment right to freedom of the press. Without an explicit constitutional guarantee, the legal basis for access has developed almost entirely through state legislation. Prior to World War II there was little organized activity promoting open access to government. But the rise of the modern, urbanized, industrialized society accompanied by growth in big government led to a need for increased public knowledge of government.

A movement proclaiming the people's right to know was organized during the 1950s, with access to meetings of governmental bodies considered an important issue of the campaign. Professional journalistic organizations and citizens' groups led in promoting passage of legislation in states without such laws and strengthening the laws in states

with earlier open-meeting legislation. By 1976 each state had enacted open-meeting laws and federal legislation had been passed as well. Many laws have been poorly written and have not provided broad coverage. Laws revised or written after the mid-1970s contain many provisions set out in the federal legislation and in "model" laws. Generally the laws contain a statement of purpose, definition of terms, categories of coverage, provision for notice and minutes, and methods of sanction. Recording and broadcasting of meetings and holding meetings by teleconference calls are current developments creating new problems of access. There often has been a disparity between the intent and application of open-meeting laws. Recurring problems involve exceptions and executive sessions which restrict access, and weak enforcement measures. Some states have developed innovative laws that seek to provide solutions to these problems.

It is difficult to draw any generalizations regarding the laws since they vary greatly from state to state; they are constantly being updated; they are qualified by court decisions and attorneys-general opinons; and they are affected by other legislation and state constitutional requirements.

The effectiveness of the legislation is, however, an important consideration of journalists and the public. Do the laws provide for broad coverage, clear definition, minutes and records, and adequate sanctions and enforcement? How do current laws compare to earlier legislation? This study seeks to provide a method of categorizing each state's open-meeting law for the purpose of analysis.

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CHAPTER II

REVIEW OF LITERATURE

This chapter will review six separate studies of open-meeting legislation. The studies do not all approach the subject in the same manner. They do, however, share one thing in common: they all are inclusive. Each study is an overview of open-meeting legislation in the 50 states.

Harvard University, 1962

The first comprehensive study dealing with open-meeting legislation, "Open Meeting Statutes: The Press Fights for the 'Right to Know,'" appeared in Harvard Law Review in 1962. Since that time, the study has been quoted frequently in books on mass media law, and in law review articles and other research on the subject.[1] "The Press Fights for the 'Right to Know'" included an introduction, a critique of the open-meetings principle, the common law and constitutional background, a section on the content of the statutes (the main body of the report), an assessment of the statutes, a consclusion and a proposed open-meeting law.

Information for the article was obtained for the most part from the 26 states having open-meeting laws at the time, an increase of 15 states in five years. The writers also used a great deal of material received "in response to letters sent by the Review to newspaper editors in 25

states, city managers and city attorneys of several communities, and from a number of associations of local governmental officials and national newspaper organizations."[2] Further information was gathered from books and periodicals on the subject and from publications of journalism societies, governmental organizations and legal groups. Only a few court cases and attorneys-general opinions were reviewed. This may have been due to the recent history of such legislation.

Authors of the article analyzed and interpreted the existing legislation and the responses received from letters sent by the Harvard Law Review. The study concluded that "open meeting legislation has neither revolutionized the conduct of state and local government nor brought it grinding to a halt."[3] In addition, the statutes had successfully operated "to break down past practices of closed meetings."[4] Regardless of the fact that "some disadvantages are unavoidable in any such requirement," open meetings were, from the findings of the report, "a legitimate public interest."[5] "Apparent difficulties of the legal requirements," the report continued, were "to some extent . . . inherent in the open-meeting concept," but they also may have stemmed "largely from the presently inadequate statutory treatment of executive sessions," and from "poor draftsmanship" of the laws.[6] At that time fewer than one-fourth of the statutes contained a notice provision and only three had a "workable enforcement procedure."[7] The report ended by suggesting that a resolution to the problems that faced both journalists and public officials could be found if the "limits and operation of the open-meeting principle" were defined with "the greatest possible precision."[8]

An appendix offered a proposed statute. This included a general description of meetings to be opened; exemptions (there were three); six

instances where closed sessions were allowable; public notice procedures, and rules of enforcement. The latter provided a fine for violators, injunction as a remedy to prevent violation, and invalidation of action for reason of violation.

Northwestern University, 1973

In 1973 the Northwestern University Law Review published an article by Douglas Q. Wickham analyzing open-meeting legislation. Wickham relied primarily on information found in the statutes for his article, as did the previous Harvard study. The author also used books dealing with freedom of information and the law of mass communication as references. In addition to such diverse material as an article from the Massachusetts Advisory Council on Education[9] and the popular book, The Selling of a President 1968.[10] Perhaps because of the increased number of states with open-meeting legislation, some with laws in effect for over 15 years, Wickham was able to cite as references other law review articles and a good many more court cases than did the Harvard study.

After an introduction, the first section of the article was devoted to analyzing existing open-meeting legislation according to the terms of public access required, exceptions and enforcement. The second section presented three guidelines for effective open-meeting legislation. The guidelines developed by Wickham included:

1. "a clear statement of purpose contained in the draft legislation itself, the preferred purpose [being] presumptive access to all meetings;"[11]
2. limitations to absolute openness through exceptions and executive session with sound judicial discretion as an ingredient to a satisfactory solution;
3. "well drawn, realistic enforcement provisions."[12]

Wickham rejected nullification and criminal sanctions as options for enforcement.

Wickham did not offer a summary to his article. His conclusion was, instead, a draft of a model statute. The legislation he proposed consisted of a statement of policy; definitions for the terms covered in the act; a section on meetings which included nine general restrictions, either exceptions or cause for executive session; a provision for notice; rules for the conduct of executive session; and two enforcement measures, civil action and removal from office.

FOI Foundation, 1974

In 1974, The Freedom of Information Foundation published a study funded by a grant from the American Newspaper Publishers Association Foundation. The study, "State Open Meetings Laws: An Overview," was conducted by John B. Adams, dean of the School of Journalism at the University of North Carolina. Adams gathered material for his study by obtaining copies of current open meeting laws from all states that had such legislation and from letters sent to editorial executives on newspapers in the capital cities of the 50 states. He asked for information about the functioning of open-meeting laws, reports of test cases involving journalists, and expressions of attitudes toward the concept of open meetings. Responses were received from 33 of the 50 editors. Those were treated as a corollary to the study, and were summarized in a separate section. Overall, the editors' letters favored open-meeting legislation.

The main purpose of the study was to categorize the legislation. At the outset, Adams presented two caveats: first, that there was a

great deal of legislative activity relating to open meetings, and second, that all open-meeting statutes are subject to interpretation, and the interpretations of the study were his own.

Although he provided no information as to how he arrived at his choice of criteria, Adams established an eleven-point system for determining a comprehensive open-meeting law. He then scored each state's law on a scale, with 11 as a maximum score. According to the criteria, a strong open-meeting law would:

1. Include a statement of public policy in support of openness.
2. Provide for an open legislature.
3. Provide for open legislative committees.
4. Provide for open meetings of state agencies or bodies.
5. Provide for open meetings of agencies and bodies of the political subdivisions of the state.
6. Provide for open county boards.
7. Provide for open city councils (or their equivalent).
8. Forbid closed executive sessions.
9. Provide legal recourse to halt secrecy.
10. Declare actions taken in meetings which violate the law to be null and void.
11. Provide for penalties for those who violate.[13]

Adams did not intend his research to be a comprehensive summary of the legislation, or a specific guide for reporters or other individuals on the law. His intent was to present, instead, an overview of the various statutes with some discussion of principles plus examples.

Based on the characteristics of the 11 criteria, a state with an "ideal" law could score a maximum of 11 points. Adams pointed out the fact that "substantial differences might exist between two states with the same score since some characteristics have more value for openness than others."[14] Consequently, no attempt was made to weigh the various criteria.

Two model laws developed by Sigma Delta Chi and by Common Cause

were included in an appendix. They also were tested using the 11 criteria. A table summarized the findings. In addition, Adams provided a list showing each state's rank in descending order. Only Tennessee's law was given a perfect score of 11. Rhode Island and Maryland were scored the lowest, each rating only one point. The Sigma Delta Chi model legislation rated a 5 and the Common Cause model law a 10.

Adams emphasized that, in 1974, a great deal of legislative activity concerning open meetings was under way in a number of states. His research concluded that the status of open-meeting laws in most of the states was "marginal," and that very few states, by law, went beyond "minimal provisions" for openness.[15]

FOI Foundation, 1975

Jack Clarke, an associate professor at the University of Alabama School of Law and director of the Rural Law Institute, produced a report on open meetings published by the Freedom of Information Center. The report discussed the "rationale of open-meeting legislation in a representative government," and the "value, design, and substantive content" of such legislation.[16]

The study, titled "Open Meeting Laws: An Analysis," evaluated different characteristics found in open-meeting laws with respect to effectiveness. The extensively documented report examined state codes with regard to open meetings, as well as court cases involving matters related to the laws. Clarke also referred to earlier studies, including the work done by Harvard Law Review and Douglas Wickham.

The main body of the report was devoted to the extent of coverage provided in existing legislation. It also examined a long list of

exceptions to the open-meeting requirement and reviewed recording and broadcasting, appropriate meeting areas, and the need for keeping order at meetings. Concerning major issues, Clarke's recommendations followed those found in previous studies. In only one area--the inclusion of staff meetings of public agencies--were the recommendations unique.

The report included a suggested open-meeting act in an appendix. The act included definitions, coverage, notice, reconvened meetings, meeting areas, minutes, recording and broadcasting, exemptions, rules for the conduct of executive sessions, civil and criminal remedies for enforcement allowing for removal from office as a penalty, and regulations for keeping order at meetings.

Common Cause Report, 1978

During 1978, another study of open-meeting laws was made. Common Cause, a Washington-based citizens' action group, produced a 17 page grid covering major provisions of state open-meeting laws. The study is unpublished, but may be obtained by request to the organization.

According to Holly Wagner, state issues coordinator, the report was originally prepared by an attorney for the group and is updated yearly from data supplied by state Common Cause coordinators.[17]

The study consists entirely of a grid on which major provisions of the laws are charted. The grid provides information on 10 different subjects covered in open-meeting legislation. The state's name and the statutory citation, or legal title, of the law are listed first, followed by major areas of coverage--state and local agencies, the executive branch and the state legislature, exceptions, notice, minutes and sanctions.

A separate section details the status of open legislative assemblies and legislative committees. When a state's legislature is opened by constitution, citations are provided, but when openness is directed by statute, no citations have been noted on the grid.

By specifically listing exemptions to each state law and detailing sanctions, including the dollar amount of misdemeanor penalties, the Common Cause report gives the most complete comparison of open-meeting laws of any study reviewed in this chapter.

The study fails to offer any explanation for the categories covered on the grid, and does not provide a summary of conclusion concerning the findings.

NAAG Report, 1979

The last study to be presented in this review of literature is a three-volume report prepared by the National Association of Attorneys General. The report is separately titled Open Meetings: Exceptions to State Laws, Open Meetings: Actions and Meetings Covered, and Open Meetings: Types of Bodies Covered. Published in 1979 as a "topical enumeration of the legal issues raised during the application of [open meetings] law,"[18] The study is intended to aid in resolving questions concerning the application of these laws to specific situations. The report was intended to be used as a reference by attorneys general and other public officials. It was not meant to be an "interpretive guide to the advantages of one law over another."[19]

Sources for the study include numerous court cases, formal opinions and letter opinions of attorneys general, and the open-meeting statutes themselves. A table of statutory citations for each state's law and an

introduction appears in Open Meetings: Exceptions to State Laws. This volume presents chapters dealing with conflict of statutes and implied exceptions, personnel matters, disciplinary proceedings, quasi-judicial matters, occupational or professional licensing, confidential records and related matters, investigatory proceedings, parole hearings, the attorney-client privilege and pending litigation, labor negotiations, sale or acquisition of public property, and emergencies and public safety.

Open Meetings: Actions and Meetings Covered deals with what constitutes a meeting and how meetings meet the requirement of openness. Separate chapters consider the definition of various terms including meeting and openness, and the topics of formal and informal meetings, executive sessions, administrative hearings, social gatherings, meetings at unusual locations and via unusual means, quorum requirements, and deliberations and final actions. There is, in addition, a chapter concerning minutes and records in this volume.

Open Meetings: Types of Bodies Covered considers the nature of public business and identifies the types of public bodies that are affected by open-meeting legislation. Chapters discuss the general criteria for coverage, the creation and composition of bodies, committees and subcommittees of public bodies, advisory bodies, executive, legislative and judicial entities and private and nonprofit organizations.

One major subject not covered in the three volumes is that of enforcement provisions.

Although there is no major conclusion to the report, summaries are offered at the end of each chapter. Intended for use by public officials and those in the legal profession, the three volumes offer an

overwhelming amount of information on the interpretation of open-meeting legislation useful to social scientists, journalists and other interested individuals.

Summary

The six articles studied in this review of literature share one common element: they all provide an overview of open-meeting legislation in the 50 states. The studies vary in their approach to the subject matter. The Harvard, Northwestern and FOI Foundation Report, 1975, approached the study through the components of open-meeting legislation, grouping various elements of the laws and offering analysis and suggestions for improvement. The report of the National Association of Attorneys General was published as a reference for use by public officials in resolving questions concerning the application of the laws to specific situations. While the Common Cause Report and the Adams study each provide a grid for the comparison of the major provisions of the laws, the Common Cause Report does not offer any explanation or summary of findings. The Adams study alone presents a method of scoring each state's open-meeting legislation in addition to providing a comparison of the laws and an explanation of the categories covered. The advantages of the Adams report as well as its wide circulation at publication make it the choice of the author as a base line for the current study of open-meeting legislation.

It should be noted that only two master's theses and one doctoral dissertation dealing with open-meeting laws were located in a careful search of Journalism Abstracts and other sources. None of these, listed in the End Notes for Chapter I, inpinges upon the purpose and method of this thesis.

END NOTES

[1]Douglas Q. Wickham, "Let the Sun Shine In," Northwest University Law Review 68 No. 3 (1973), p. 484; Jack Clarke, "Open Meeting Laws: An Analysis," Freedom of Information Center Report No. 338 (Columbia: University of Missouri, 1975), p. 7; National Association of Attorneys General, Open Meetings: Exceptions to State Laws (Raleigh: National Association of Attorneys General Foundation, 1979), p. 1; Douglas McBee, "Legislation, Sunshine in the Sunbelt: Oklahoma's New Open Meeting Act," Oklahoma Law Review 34 (1981), p. 362; Pat Keefe, "State Open Meetings Activity," Freedom of Information Center Report No. 378 (Columbia: University of Missouri, 1977), p. 7; Harvey Zuckman and Martin Gaynes, Mass Communications Law in a Nutshell (St. Paul: West Publishing Co., 1977), p. 161.

[2]"Open Meeting Statutes: The Press Fights for the 'Right to Know,'" Harvard Law Review 75 (1962), p. 1200.

[3]Harvard Law Review, p. 1219.

[4]Ibid.

[5]Ibid.

[6]Harvard Law Review, p. 1220.

[7]Ibid.

[8]Ibid.

[9]"Organizing an Urban School System for Diversity," Massachusetts Advisory Council on Education (1970) quoted in Wickham, p. 489.

[10]J. McGinniss, The Selling of a President 1968 (1969) quoted in Wickham, p. 488.

[11]Wickham, p. 488.

[12]Wickham, p. 495.

[13]John B. Adams, State Open Meetings Laws: An Overview (Columbia: Freedom of Information Foundation, 1974), p. 4.

[14]Adams, p. 5.

[15]Adams, p. 20.

[16]Clarke, p. 1.

[17]Telephone interview with Holly Wagner, State Issues Coordinator, Common Cause, Washington, D.C., June 20, 1984.

[18]National Association of Attorneys General, p. 4.

[19]Ibid.

CHAPTER III

METHODOLOGY

An informed public is prerequisite to a representative democracy. A fully informed public requires participation in government, possible only through open access to the governmental decision-making process. The press and interested citizens have long worked toward the goal of open meetings of governmental bodies as a means to ensure an informed electorate. Since 1976, a part of that goal has been realized. Today, each of the 50 states has an open-meeting statute on record. It is the effectiveness of this legislation that now is an important consideration of journalists and the public. The quality of current open-meeting legislation is in question. Some of the questions being raised:

Are current laws broad in coverage? Or, do they merely pay lip-service to the principle of open meetings while actually restricting access?

Do current laws precisely define the limits and operation of the "sunshine" concept? Or, do they leave huge loopholes through which the laws may be manipulated or avoided altogether?

Do current laws provide for strict enforcement of the open-meeting principle? Or, are they only as strong as the paper they're written on?

How do the current laws compare to earlier open-meeting legislation?

Such questions are central to this study, which attempts to answer

them through (1) comparative examination of the breadth of coverage and strength of enforcement measures of current legislation and (2) a comparison with earlier legislation. The present research will rank current laws on the same criteria for openness devised and implemented by John Adams in his 1974 study, State Open Meetings Laws: An Overview. Further, an additional set of criteria will be used to judge current legislation in terms of precise delineation for the operation of the laws.

Use of Sources

Information for the study was gathered from two sources: the aforementioned Adams study and the Oklahoma State Department of Libraries, Legal Reference Department, from which a copy of each state's open meeting statute was obtained. The OSDL houses a collection of current legislative codes from each of the 50 states.

Open-meeting statutes, as used in this study, will refer to those statutory citations listed in the Table of Open Meeting Laws, published by the National Association of Attorneys General, Open Meetings: Exceptions to State Laws.[1] Statutory citations which have been renumbered since the table was prepared in 1979 will be listed with both the 1979 and the current numerical identification. Except for California, Colorado and Connecticut, only one statute concerning open meetings is cited for each state. In this study three California statutes, CAL. GOVT. CODE §§ 54950-54961, §§ 11120-11131, and §§ 9027-9032 will be studied, as these are the statutes dealing with the major provisions of open-meeting law. Two California statutes relating to openness of specific meetings will not be examined. For Colorado, two statues--COLO.

REV. STAT. §§ 24-6-401 to 24-6-402, covering state agencies and legislature, and § 29-9-101, covering political subdivisions--will be used, as will Connecticut laws found in CONN. GEN. STAT. ANN 44 1-21 to 1-21a and §§1-18a. For each of the other 47 states only one piece of legislation will be reviewed. Excluded are statutes covering the open meetings of state legislatures and judicial bodies, or other matters that are not specifically included under the provisions of the expressly titled open meeting, open access, disclosure, or "sunshine" law. In addition, the laws reviewed are from the statutory citations and supplements to the citations for use in 1983 and 1984. Session Laws for amendments made during legislative sessions in 1983 and 1984 are not covered in this thesis.

The Study: Part I

The first part of the study will duplicate the comparison made in State Open Meetings Laws: An Overview, for the purpose of determining the degree of openness and effective enforcement found in current legislation, and for a comparison of current legislation with that of laws studied by Adams in 1974. The first part of the study will employ the criteria, rating method, and caveats established by Adams. The caveats are:

1. The status of state law today is blurred by an impressive amount of activity, in legislatures and out, resulting in frequent and extensive change. (This is perhaps even more true today.)

2. Open Meetings statutes (as is the case of all laws) are written in a style which inevitably requires interpretation.

For these reasons, readers should approach the data with the expectation that some changes could have occurred since

> this writing, and that interpretations are those of the writer and may not coincide with others' interpretations.
>
> It is not the intent here to provide a set of comprehensive guidelines for reporters or public in individual states. The responsiblity for verification and clarification must rest with those whose need to know is specific or in a given state. What follows is an overview . . . to illustrate the points.[2]

The following additional qualification of Adams's study will be incorporated into this thesis:

> It is recognized that two states with the same score may vary in actual degree of effectiveness, due to differences in the relative value of the criteria. However, no attempt will be made to weigh the value of the various criteria.[3]

The following criteria make up the eleven-point scale used by Adams and repeated in this study:

1. A statement of public policy in support of openness.
2. An open legislature.
3. Open legislative committees.
4. Open meetings of state agencies or bodies.
5. Open meetings of agencies and bodies of the political subdivisions of the state.
6. Open county boards.
7. Open city councils (or their equivalent).
8. Forbid closed executive sessions.
9. Legal recourse to halt secrecy.
10. Declare actions taken in meetings which violate the law to be null and void.
11. Penalties for those who violate.[4]

To clarify the nature of the executive session and to provide a more realistic perspective of current law, a corollary will be added to criterion No. 8. An adjunct notation of states with executive-session provisions stating five or fewer, six to ten and more than ten causes for closed meetings will be made.

The Study: Part II

The second part of the study will compare current legislation in terms of precise delineation for the operation of each law. In addition to the caveats presented in the Adams research, two other caveats have been included. These concern the content of the laws.

First, the second part of the study will not attempt an item-by-item statement of the content of each law. For example, while many provisions, such as permission for recording and broadcasting meetings or the restriction of teleconferencing as a means for holding a meeting, are important adjuncts to the laws, time and resources preclude their full attention. Taken in total, the items are too unwieldy for both the researcher, who must attempt a method of categorization, and for the reader, who must attempt a method of comprehending such an overwhelming amount of informaiton. This section of the study, therefore, will not attempt to rank each item covered in open-meeting legislation. It will, rather, seek to provide a categorizaiton of general content necessary for effective legislation.

Secondly, the treatment of provisions varies from state law to state law. For example, there is a difference between a law which requires notice for all meetings and 24-hour notice of special and emergency meetings, and one which requires notice only for regularly scheduled meetings. Similarly, a law which requires written minutes of executive sessions as well as open sessions is more comprehensive than one which requires minutes only for open sessions. The difficulties encountered when attempting to weigh the relative value of the provisions made untenable any attempt to differentiate these varying degrees of the categories.

The criteria of the second part of the study are judged solely as broadly generalized categories. Four additional categories will be rated in the second part of the study: definition, a formal explanation of what is meant by the terms included in the legislation; notice, a statement requiring that information concerning the time and place of meetings be provided; minutes, a statement requiring detailed minutes be recorded and made available to the public; and provision for conduct of executive sessions.

All of these categories are important to open-meeting legislation because they draw guidelines for the execution of the law. In many instances there has been a great difference between the intent and the actual application of the law. Clearly worded, specific laws set groundrules for implementation and help prevent abuses.

These four categories are included in the federal law,[5] as well as in the model legislation developed by Common Cause[6] and the model legislation presented in "Open Meeting Laws: An Analysis."[7] The provisions for notice, definition and conduct of executive sessions are a part of the model legislation of the National Conference of State Legislatures[8] and the model legislation found in Douglas Wickham's Northwestern University Law Review article.[9] John Adams, author of the original study comparing open-meeting laws, said, in retrospect, that he would add "the criterion of a notice provision if conducting the study again."[10]

The purpose of the second part of the study is to determine how explicitly each state's open-meeting law has been framed. In summary, the questions asked by the study are: How broad is the coverage? How clear is the wording? How strong is the enforcement? How different are today's laws from those of the past?

END NOTES

[1]The National Association of Attorneys General, Open Meetings: Exceptions to State Law (Raleigh: The National Association of Attorneys General Foundation, 1979), p. 5-6.

[2]John B. Adams, State Open Meetings Laws: An Overview (Columbia: University of Missouri, 1974), p. 1-2.

[3]Adams, p. 5.

[4]Adams, p. 4.

[5]Federal Sunshine Act as quoted in Western Washington Chapter, Society of Professional Journalists, Sigma Delta Chi, Access (Jan., 1981), p. 5.

[6]Adams, pp. 24-29.

[7]Jack Clarke, "Open Meeting Laws: An Analysis," Freedom of Information Center Report No. 338 (Columbia: University of Missouri, 1975), pp. 10-11.

[8]National Conference of State Legislatures, State Legislative Ethics (Denver: National Conference of State Legislatures), pp. 21-22.

[9]Douglas Q. Wickham, "Let the Sun Shine In," Northwestern University Law Review 68 No. 3 (1973), pp. 499-500.

[10]Jerry Lee Hilliard, "Tennessee's 'Model' Open Meetings Law: A History," (Ph.D. Diss., University of Tennessee, 1978).

CHAPTER IV

EXPLANATION OF CHARACTERISTICS INCLUDED IN THE STUDY

The reader should approach the data in this study with an awareness of the following limitations.

1. This is a study of statute law, and not open-meeting laws as they have been interpretated by attorneys-general opinions and court cases.

2. Other legislation and state constitutional requirements also affect open-meeting laws.

3. Legislative activity frequently adds to and/or changes existing open-meeting laws.

It is not the intention of this study to provide a set of guidelines for reporters or the public to follow in using open-meeting laws. The study does not attempt an item-by-item statement of the content of each law. Neither does the study attempt to place value on one characteristic above another, or to value the strength of each individual characteristic as it is written in the 50 state laws.

The intention is to provide an overview of specific criteria which can be used to judge open-meeting laws and compare the laws of one state to those of another.

The following is a series of short discussions of the 11 factors presented in the Adams study as necessary to a comprehensive open-

meeting law, and the four additional factors presented in this study as necessary for a well defined open-meeting law.

Part 1: Statement of Public Policy

It is appropriate for state legislatures to include in open-meeting legislation a statement establishing the purpose of the law. These statements make clear the meaning of and reason for the law. Hawaii's declaration of policy and intent states:

> In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of governmental agencies--shall be conducted as openly as possible.[1]

Colorado's declaration of policy is simple and direct:

> It is declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.[2]

In addition, the declarations of policy in many state laws give specific instruction as to the interpretation of the law. For example Alaska's law reads:

> AS44.62.310(c)(1) shall be construed narrowly in order to affectuate the policy stated in 9a) of this section and avoid unnecessary executive sessions.[3]

The Adams study found 22 state laws provided a statement of purpose while this study found 33 such statements.

Part 2: Open Legislatures

In reading this study, one should not assume that legislatures not covered by open-meeting legislation are therefore closed legislatures. Meetings of state legislatures have long been open to the public through constitutional provisions, as well as by custom and by action of the rules committees of legislatures. Adams's 1974 study found that 22 states provided specifically or by implication for open legislatures. This study found 30 states had provided specifically for open legislatures through open-meeting legislation.

Some state open-meeting laws, while providing for open legislatures, contain rules for the legislature that differ from those of other open meetings. Some state open-meeting laws specifically exclude the legislature from the law. Proponents of the "right to know" stress the importance of including legislatures in the written open-meeting law to guarantee a uniform standard of open access.

Part 3: Open Legislative Committees

In analyzing the criteria of his 1974 study, Adams reasoned: "If it is true that the bulk of the work of a legislature is carried out in its committees, openness would seem to be appropriate here (legislative committees) as with the parent body."[4] He found that 23 states opened their legislative committees while 22 opened their legislatures. This study produced a similar finding: 36 states have opened their legislative committees under open-meeting laws while 30 have specifically opened the work of their legislatures.

Parts 4, 5, 6 and 7: Openness of Various Bodies

The Adams study specifically listed certain types of governmental bodies to be covered in comprehensive open-meeting legislation. They included state, county and local agencies, county boards and city councils. The 1974 study found these to be the categories of greatest compliance with the criteria. Forty-seven states were listed in Category 4, and 44 states were listed in Categories 5, 6 and 7. Again, this study resulted in similar findings. Not only were these the categories of greatest compliance with the criteria, but the current study found a letter-perfect record of legislation. All 50 of the states met the criteria of Categories 4, 5, 6 and 7. Not only did they meet the criteria, but most went beyond them in opening many other types of meetings to the public. One such state is Arizona, where the law opens the meetings of all public bodies. Public bodies in Arizona are defined as meaning:

> . . .the legislature, all boards and commissions of the state or political subdivisions, all multi-member governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.[5]

Many states list exceptions to the requirement of open meetings for certain groups. Parole boards and university faculty meetings are examples of a host of groups that states have deemed exclusive of the provisions of open meeting legislation.

Part 8: Open Executive Sessions

Executive sessions are portions of a meeting that may be closed to

the public. Almost all states allow, under certain circumstances, for meetings and/or parts of meetings to be private. Confidentiality for both public matters and individual privacy has been viewed by a majority of states as desirable in some instances. Advocates of open access to government view the need for disclosure as greater than the need for secrecy. Some of these advocates oppose all exceptions and reasons for executive sessions. Others, while accepting the need for confidentiality in some instances, stress strict limitations on the exclusionary provisions of open-meeting laws.

Adams reported only five states which specifically forbade or made no provision for closed sessions. They were Colorado, Florida, Minnesota, North Dakota and Tennessee. This study found that, in the intervening years, the number of state laws in which no closed executive session is allowed has dwindled to two. These states are Florida and Tennessee. This was the only category of the current study which indicated a reversal in trend from the 1974 study. Both studies showed "Open Executive Sessions" as the category where the fewest number of states were found to comply, and both studies showed the percentage of compliance was much lower in this category than any other. Adams noted that Oregon permitted news persons to attend closed sessions. This study confirmed that the Oregon law continues to permit the media to attend otherwise closed meetings.

Because so few states forbid executive sessions, and because almost all states give specific reasons for allowing closed meetings, this study introduced an adjunct category. Its purpose was to determine the number or count of the various exceptions to the law and/or stated reasons for allowing executive sessions. The writer found that 14 state

laws permit five or fewer exceptions; 19 states list between six and 10, and 17 states permit more than 10 exceptions and/or reasons for holding executive sessions. In addition to these stated exceptions and/or reasons for holding closed meetings, the present study found that the laws in five states include encompassing statements. These are broad, generalized statements written into open-meeting laws in language that permits any number of subjects to be brought up in closed meeting. An example of one such statement is found in South Carolina's law: ". . .private matters presented by individuals or groups of citizens. . . ."[6] This is one of three stated reasons for permitting executive sessions. Such broad statements may encourage circumvention of the law.

Part 9: Legal Recourse to Halt Secrecy

Basic to all law is the premise that recourse is provided to halt violations. The Adams study held that "the principal purpose of the mechanism would be to force illegally closed meetings to be opened."[7] Writ of mandamus, a court order to open a meeting being held in violation of the law, and injunction, a similar court order to ensure that meetings illegally closed in the past will be open in the future, are specific enforcement measures. The Adams study found that 21 states provided for a general "appeal to the court" or listed mandamus and injunction as remedies. This study found 35 states specifically listed mandamus and/or injunction as remedies to violation.

Part 10: Actions Taken Contrary to Law to be Null and Void

Adams found the null-and-void factor to be an important element in

"putting teeth into the law."[8] When action is rescinded following a meeting not in compliance with the law, there is incentive for all public officials to see that meetings strictly follow the letter of the open-meeting law. The Adams study found that 14 states had made provisions to declare "actions taken contrary to the laws to be null and void in one way or another."[9] This study found that 38 state laws specifically require nullification, or declare acts in violation void, or provide for voidability, a legal mechanism allowing the courts to declare an action void. The writer found the null-and-void category to have the greatest increase in number of state laws complying. Twenty-four more state laws now require nullification or the voiding process than in 1974.

Part 11: Penalties for Non-Compliance

This category lists those states whose laws provide that penalties be imposed on those who fail to comply with the law. This study as well as the Adams study found no consistent pattern of penalties among the states' laws. Penalties in this study include: imprisonment in Oklahoma, South Carolina, Texas, West Virginia and Louisiana; removal from office in Ohio, Minnesota, Iowa and Arizona; a misdemeanor offense with amounts of fines ranging widely; provision for the court to grant equitable relief; and review by committee on open government. Adams found the general types of penalties to be imprisonment, removal from office, and misdemeanor. Adams listed a 1973 New Hampshire amendment which held violators responsible for reasonable attorneys' fees and costs incurred in making the information available or the proceedings open to the public, as well. In this study the awarding of court costs was not considered as a penalty. An increase in state law from 26 to 42

was found when comparing the results of the two studies for this category.

Definitions

This is the first of four additional categories added to the review of the open-meeting laws. These categories were not examined in the 1974 study. They were designed to measure the effectiveness of the construction of open-meeting laws. Definitions were included as a category because of the need for accurate explanation of terms used in open-meeting laws. Oklahoma's law defines meeting, regularly-scheduled meeting, special meeting, emergency meeting and continued or reconvened meeting. Various state laws also define what is meant by public body and other terms such as advisory committee, legal action, political subdivision, and quasi-judicial body. These definitions strengthen open-meeting legislation by setting up parameters for operation of the law. Forty-two state laws were found to provide definitions.

Minutes

As no one person or representative of the media can be present at all meetings of all public bodies, minutes necessarily are an element needed in open-meeting legislation. They provide an additional means of access to government by establishing a permanent record open to public review. A growing number of state laws have been amended in recent years to allow for the electronic recording of meetings in addition to minutes kept in official records. This study found 42 states provided for some form of minutes for open meetings. Four states required minutes for executive sessions alone and one state required only that

decisions be recorded in the minutes. Maine's open-meeting law seems to imply that minutes be kept, without specifically stating the requirement.

Notice

A statement requiring that information concerning the time and place of meetings be publicly accessible is also a necessary ingredient in open-meeting legislation. A posted agendaoften is included in notice provisions. This enables the public and, as part of the public, the news media to be aware of items to be discussed. Notice of all meetings--whether regular, special, called, emergency, etc.--strengthens the legislation. Some state laws call only for notification of regularly scheduled meetings. Others require a specific (e.g., two hours) time-notification limit to the media for emergency meetings. Some require only that notice be "timely." The laws in 46 states now require notice.

Provision for Conduct of Executive Sessions

Forty-eight state laws provide for executive sessions. These laws list specific instances where closed sessions may be held. Yet only 40 state laws set up rules of procedure for executive sessions. Rules of conduct, such as requiring a two-thirds majority vote before adjourning to closed session or prohibiting final action to be taken in secret, are safeguards against abuse of executive-session privilege. In Pennsylvania, the law permits executive sessions to last no longer than 30 minutes. In Minnesota, executive sessions are tape-recorded and are subject to court review. These state laws feature additional safeguards against abuse of the executive session.

END NOTES

[1]Hawaii Rev. Laws §§92-2.

[2]Colorado Rev. Stat. §§ 24-6-401.

[3]Alaska Stat. §§44.62.312.

[4]John B. Adams, State Open Meetings Laws: An Overview (Columbia, Mo.: Freedom of Information Foundation, 1974), p. 9.

[5]Arizona Rev. Stat. Ann. §§38-431.

[6]South Carolina Code Ann. §30-3-40.

[7]Adams, p. 13.

[8]Ibid.

[9]Ibid.

CHAPTER V

FINDINGS

The purpose of this study was to determine the extent of progress--or lack of progress--in the freedom-of-information movement in the past 10 years. In order to carry out this purpose, the writer chose as her benchmark the groundbreaking work of John Adams in his 1974 study, State Open Meeting Laws: An Overview.

More specifically, the present study sought to determine the breadth of coverage, the strength of enforcement measures, and the effective construction of current legislation, and to compare the situation now with earlier legislation. All of Adams's criteria, plus certain additional criteria which seemed desirable, were used by the writer.

Because of the nature of this study, it has seemed useful to collect the tabular findings at the end of this chapter, in which the findings first are presented in summary-statement form.

The findings in Part I:

1. A 56.7% average total compliance was found in 1974 and a 75.5% average total compliance was found in this study--an increase of 18.8% in the 11 comparative categories.

2. In comparison with legislation in 1974, this study found the greatest increase in compliance to be in Category No. 10. An increase from 28% to 76% was recorded in the number of states which have enacted

legislation providing that action found in violation of the open-meeting law be found null and void.

3. Adams's study of legislation in 1974 found no complete compliance of all states in any category. However, in this study, complete compliance of all 50 states was found in Categories No. 4, 5, 6 and 7. These categories refer to open public bodies at the state, county and local level.

4. In comparison with legislation in 1974, this study found the only decrease in compliance with the criteria to be in Category No. 8. Ten percent or five states forbade executive sessions in 1974. This study found that 4%, or two states, Florida and Tennessee, do not permit executive sessions.

5. An adjunct category to the comparative study found that 28% or 14 states allowed five or fewer exceptions and/or reasons to close meetings by executive session, 38% or 19 states allowed six to 10, and 34% or 17 states allowed more than 10 exceptions and/or reasons for executive sessions. Seventy-two percent or 36 states allowed more than five instances in which meetings may legally be closed to the public.

6. In 1974 and in this study as well only one state law, that of Tennessee, obtained a perfect score of 11.

7. In comparison with legislation in 1974, this study found that the scores of 36 states were raised, the scores of eight states remained the same, and the scores of six states were lowered.

8. The mean state score in 1974 was 6.04. The mean score in Part I of this study was 8.3. The media score in 1974 was 7 and in Part I of this study the median score was 8.

9. Categories No. 1 through 8 were designed to measure the

comprehensiveness of the open-meeting laws. The 1974 study showed an average 62.8% compliance with state law in these categories. This study showed an average 75.2% compliance.

10. Categories No. 9 through 11 were designed to measure the strength of enforcement procedures of open-meeting laws. The 1974 study showed an average 40.7% compliance with state law in these categories. This study showed an average 76% compliance.

Part II of this study was designed to examine the construction of open-meeting legislation and its effectiveness. An average 86% of the state laws complied with the four additional categories.

1. Thirty-three states had perfect compliance in the four categories of Part II.

2. Tennessee was the only state found to have a perfect score in both parts of this study. Tennessee alone met all the criteria of all 15 categories. Ten states rated a score of 14, eight states a score of 13, twelve states a score of 12, seven states a score of 11, six states a score of 10, three states a score of 9, and one state each had a score of 8, 7 and 5, respectively.

3. Categories 12 through 15 were designed to measure the quality of draftmanship in construction of the laws. This group of categories showed the greatest degree of compliance found in the study. In these four categories, state laws had an average 86% compliance.

4. Overall state open-meeting laws examined in this study revealed an average compliance of 78.3% for all 15 categories.

In short, the general trend is toward laws that promote greater access to public meetings. The study revealed that the categories covering executive sessions are the only exception to this trend. Not

only is there now a decrease in the number of states prohibiting executive sessions, but almost all states permit exceptions to the law which exempts certain meetings.

TABLE I

LIST OF STATE OPEN-MEETING LAWS

Jurisdiction	Statutory Citation*
Alabama	ALA. CODE tit.(14,§§393 to 394) 13A-14-2
Alaska	ALASKA STAT. §§44.62.310 to 44.62.312
Arizona	ARIZ. REV. STAT. ANN. §§ 38-431 to 38-431.09
Arkansas	ARK. STAT. ANN. §§(12-2801 to 12-2807) 12-2802 to 12-2807
California	CAL. GOV'T. CODE §§ 54950 to 54961; CAL. GOV'T. CODE §§ 11120 to 11131; CAL. GOV'T CODE §§ 9027 to 9032
Colorado	COLO. REV. STAT. §§ 24-6-401 to 24-6-402; COLO. REV. STAT. §§ 29-9-101
Connecticut	CONN. GEN. STAT. ANN. §§ 1-21 to 1-21a; CONN. GEN. STAT. ANN. §§ 1-18a
Delaware	DEL. CODE ANN. tit. 29, §§(10004 to 10005) 10002 to 10005
Florida	FLA. STAT. ANN. §§(286.011 to 286.012) 286.0105 to 286.012
Georgia	GA. CODE ANN. §§ (40-3301 to 40-3303) 50-14-1 to 50-14-4
Hawaii	HAWAII REV. LAWS §§ 92-1 to 92-13
Idaho	IDAHO CODE ANN. §§ (67-2340 to 67-2346) 67-2340 to 67-2347
Illinois	ILL. REV. STAT. ch. 102, §§ 41 to 46
Indiana	IND. ANN. STAT. §§ 5-14-1.5-1 to 5-14-1.5-7
Iowa	IOWA CODE §§ (28 A.1 to 28 A.8) 28 A.1 to 28 A.9
Kansas	KAN. STAT. ANN. §§ 75-4317 to 75-4320
Kentucky	KY. REV. STAT. §§ 61.805 to 61.850
Louisiana	LA. REV. STAT. §§ (42:4.1 to 42:10) 42:4.1 to 42:11
Maine	ME. REV. STAT. tit. 13 §§ (401 to 410) 1-401 to 1-410
Maryland	MD. ANN. CODE art. 76A, §§ 7 to 15
Massachusetts	MASS. GEN. LAWS ANN. § 15.261 to 15.275
Minnesota	MINN. STAT. § 471.705
Mississippi	MISS. CODE ANN. §§ (25-41-1 to 25-41-15) 25-41-1 to 25-41-17
Missouri	MO. REV. STAT. § (610.010) 610.010 to 610.030
Montana	(MONT. REV. CODES ANN. §§ 82-3402 to 82-3406) MONT. CODE ANN. §§2-3-201 to 2-3-221
Nebraska	NEB. REV. STAT. §§ (84-1408 to 84-1414) 84-1409 to 84-1414

TABLE I (Continued)

New Jersey	N.J. STAT. ANN. §§ 10:4-6 to 10:4-21
New Mexico	N.M. STAT. ANN. § (5-6-23 to 5-6-26) 10-15-1 to 10-15-4
New York	N.Y. PUB. OFFICERS LAW §§ 95-106
North Carolina	N.C. GEN. STAT. §§ (143-318.1 to 143-318.7) 143.318.9 to 143.318.18
North Dakota	N.D. CENT. CODE § (44-04-19) 44-04-19 to 44-04-21
Ohio	OHIO REV. CODE ANN. § 121.22
Oklahoma	OKLA. STAT. tit. 25, §§ 301 to 314
Oregon	ORE. REV. STAT. § (192.610 to 192.690) 192.610 to 192.990
Pennsylvania	PA. STAT. tit. 65, §§ 261 to 269
Rhode Island	R.I. GEN. LAWS ANN. §§ 42-46-1 to 42-46-10
South Carolina	S.C. CODE ANN. § (30-3-10 to 30-3-50) 30-4-10 to 30-4-110
South Dakota	S.D. CODE §§ (1-25-1 to 1-25-5) 1-25-1 to 1-25-4
Tennessee	TENN. CODE ANN. §§ (8-4401 to 8-4406) 8-44-101 to 8-44-201
Texas	TEX. REV. CIV. STAT. art. 6252-17
Utah	UTAH CODE ANN. §§ 52-4-1 to 52-4-9
Vermont	VT. STAT. ANN. tit. 1, §§ (312 to 320) 311 to 320
Virginia	VA. CODE ANN. §§ (2.1-343 to 2.1-346.1) 2.1-340 to 2.1-346.1
Washington	WASH. REV. CODE §§ 42.30.010 to 42.30.920
West Virginia	W. VA. CODE ANN. §§ (6-9A-1 to 6-9A-6) 6-9A-1 to 6-9A-7
Wisconsin	WIS. STAT. §§ 19.81 to 19.98
Wyoming	WYO. STAT. ANN. §§ (9-11-101 to 9-11-107) 16-4-401 to 16-4-407

*Based on a 1979 table prepared by the National Association of Attorneys General. When current citation numbering differs from the 1979 table, the 1979 citation is listed in parentheses with the current citation following.

TABLE II

COMPARISON OF THE ADAMS STUDY AND PART I OF THIS STUDY OF STATE OPEN-MEETING LAWS

State	1974[1] Score	State	1983-4[2] Score	State	1974 Score	State	1983-4 Score
Tennessee	11	Tennessee	11	Washington	7	Hawaii	8
Arizona	10	Arizona	10	Wisconsin	7	Illinois	8
Kentucky	10	Kansas	10	Iowa	6	Iowa	8
Colorado	10	Louisiana	10	Nevada	6	Kentucky	8
Kansas	9	Maryland	10	New Jersey	6	Mississippi	8
Maine	9	New Jersey	10	Oklahoma	6	Nebraska	8
Minnesota	9	New York	10	South Dakota	6	Nevada	8
Alaska	8	Utah	10	Wyoming	6	New Mexico	8
Arkansas	8	Virginia	10	Alabama	5	Ohio	8
Florida	8	West Virginia	10	North Dakota	5	Rhode Island	8
New Mexico	8	Wisconsin	10	Louisiana	5	South Carolina	8
North Carolina	8	California	9	Massachusetts	5	Texas	8
Oregon	8	Colorado	9	Ohio	5	Washington	8
South Carolina	8	Delaware	9	Pennsylvania	5	Arkansas	7
Utah	8	Florida	9	Virginia	5	North Dakota	7
Vermont	8	Indiana	9	Connecticut	4	Oklahoma	7
New Hampshire	7	Maine	9	Delaware	4	South Dakota	7
California	7	Michigan	9	Hawaii	4	Vermont	7
Georgia	7	Missouri	9	Idaho	4	Connecticut	6
Illinois	7	Montana	9	Indiana	4	Georgia	6
Michigan	7	New Hampshire	9	Maryland	1	Idaho	6
Missouri	7	North Carolina	9	Rhode Island	1	Massachusetts	6
Montana	7	Oregon	9	Mississippi	no law	Wyoming	6
Nebraska	7	Pennsylvania	9	New York	no law	Alabama	5
Texas	7	Alaska	8	West Virginia	no law	Minnesota	5

[1] Score taken from Adams's Study.

[2] Score based on statutory citations published for use in 1983-4.

TABLE III

COMPARISON OF 1974 SCORES AND SCORES TAKEN
IN PART I OF THIS STUDY

Scores	1974	This Study
11	1	1
10	3	10
9	4	13
8	8	14
7	11	5
6	6	5
5	7	2
4	5	0
3	0	0
2	0	0
1	2	0
no law	3	0
NOTE: Mean	6.04	8.3
Median	7.00	8.0

TABLE IV

ALPHABETICAL COMPARISON OF SCORES

State	1974	Part I This Study	+/-	State	1974	Part I This Study	+/-
Alabama	5	5	0	Montana	7	9	+ 2
Alaska	8	8	0	Nebraska	7	8	+ 1
Arizona	10	10	0	Nevada	6	8	+ 2
Arkansas	8	7	- 1	New Hampshire	7	9	+ 2
California	7	9	+ 2	New Jersey	6	10	+ 4
Colorado	10	9	+ 2	New Mexico	8	8	0
Connecticut	4	6	+ 2	New York	no law	10	+10
Delaware	4	9	+ 5	North Carolina	8	9	+ 1
Florida	8	9	+ 1	North Dakota	5	7	+ 2
Georgia	9	6	- 3	Ohio	5	8	+ 3
Hawaii	4	8	+ 4	Oklahoma	6	7	+ 1
Idaho	4	6	+ 2	Oregon	8	9	+ 1
Illinois	7	8	+ 1	Pennsylvania	5	9	+ 4
Indiana	4	9	+ 5	Rhode Island	1	8	+ 7
Iowa	6	8	+ 2	South Carolina	8	8	0
Kansas	9	10	+ 1	South Dakota	6	7	+ 1
Kentucky	10	8	- 2	Tennessee	11	11	0
Louisiana	5	10	+ 5	Texas	7	8	+ 1
Maine	9	9	0	Utah	7	10	+ 3
Maryland	1	10	+ 9	Vermont	8	7	- 1
Massachusetts	5	6	+ 1	Virginia	5	10	+ 5
Michigan	7	9	+ 2	Washington	7	8	+ 1
Minnesota	9	5	- 4	West Virginia	no law	10	+10
Mississippi	no law	8	+ 8	Wisconsin	7	10	+ 3
Missouri	7	9	+ 2	Wyoming	6	6	0

NOTE: Scores of 36 states were raised from 1974. Scores of 8 states remained the same. Scores of 6 states were lowered from 1974.

TABLE V

SUMMARY OF OPEN-MEETING LAWS - ADAMS STUDY

State	Includes statement of public policy 1	Provides for open legislature 2	Provides for open legislative committees 3	Open state agencies 4	Opens county local agencies 5	Opens county boards 6	Opens city councils 7	Forbids closed executive sessions 8	Legal recourse to halt secrecy 9	Actions in meetings in violation void 10	Provides penalties for violations 11	Score
Alabama				yes	yes	yes	yes				yes	5
Alaska	yes	yes	yes	yes	yes	yes	yes			yes		8
Arizona	yes	yes	yes	yes	yes	yes	yes		yes	yes	yes	10
Arkansas	yes			yes	yes	yes	yes		yes	yes	yes	8
California	yes			yes	yes	yes	yes		yes		yes	7
Colorado	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		10
Connecticut				yes	yes	yes	yes					4
Delaware				yes	yes	yes	yes					4
Florida				yes	yes	yes	yes	yes	yes	yes	yes	8
Georgia		yes	yes	yes	yes	yes	yes		yes	yes	yes	9
Hawaii				yes	yes	yes	yes					4
Idaho				yes	yes	yes	yes					4
Illinois	yes			yes	yes	yes	yes		yes		yes	7
Indiana	yes			yes	yes						yes	4
Iowa				yes	yes	yes	yes		yes		yes	6
Kansas	yes	yes	yes	yes	yes	yes	yes			yes	yes	9
Kentucky	yes	yes	yes	yes	yes	yes	yes		yes	yes	yes	10
Louisiana				yes	yes	yes	yes				yes	5
Maine	yes	yes	yes	yes	yes	yes	yes		yes		yes	9
Maryland				yes								1
Massachusetts				yes	yes	yes	yes		yes			5
Michigan		yes	yes	yes	yes	yes	yes		yes			7
Minnesota		yes	yes	yes	yes	yes	yes	yes	yes		yes	9
Mississippi												no law
Missouri		yes	yes	yes	yes	yes	yes		yes			7
Montana	yes	yes	yes	yes	yes	yes	yes					7
Nebraska	yes			yes	yes	yes	yes			yes	yes	7
Nevada	yes			yes	yes	yes	yes				yes	6
New Hampshire		yes	yes	yes	yes	yes	yes				yes	7
New Jersey	yes		yes	yes		yes	yes			yes		6
New Mexico			yes	yes	yes	yes	yes		yes	yes	yes	8
New York												no law
North Carolina	yes	yes	yes	yes	yes	yes	yes		yes			8
North Dakota				yes	yes	yes	yes	yes				5
Ohio		yes		yes	yes	yes	yes					5
Oklahoma				yes	yes	yes	yes			yes	yes	6
Oregon	yes	yes	yes	yes	yes	yes	yes		yes			8
Pennsylvania				yes	yes	yes	yes				yes	5
Rhode Island				yes								1

TABLE V (Continued)

South Carolina	yes	yes	yes	yes	yes	yes	yes		yes			8
South Dakota		yes	yes	yes	yes	yes	yes					6
Tennessee	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	11
Texas			yes	yes	yes	yes	yes	yes			yes	7
Utah	yes	yes	yes	yes	yes	yes	yes				yes	7
Vermont	yes	yes	yes	yes	yes	yes	yes				yes	8
Virginia				yes	yes	yes	yes		yes			5
Washington	yes			yes	yes	yes	yes		yes		yes	7
West Virginia												no law
Wisconsin		yes	yes	yes	yes	yes	yes				yes	7
Wyoming	yes			yes	yes	yes	yes			yes		6
NOTE: Totals	22	22	23	47	44	44	44	5	21	14	26	28.4
Percent of total	44%	44%	46%	94%	88%	88%	88%	10%	42%	28%	52%	56.7%

TABLE VI

SUMMARY OF OPEN-MEETING LAWS - PART I THIS STUDY

State	Includes statement of public policy 1	Provides for open legislature 2	Provides for open legislative committees 3	Opens state agencies 4	Opens county local agencies 5	Opens county boards 6	Opens city councils 7	Forbids closed executive sessions 8	Exceptions* and/or reasons for executive session	Legal recourse to halt secrecy 9	Actions in meetings in violation void 10	Provides penalties for violation 11	Score
Alabama				yes	yes	yes	yes		+[1]			yes	5
Alaska	yes	yes	yes	yes	yes	yes	yes		x		yes		8
Arizona	yes	yes	yes	yes	yes	yes	yes		x	yes	yes	yes	10
Arkansas	yes		yes	yes	yes	yes	yes		+			yes	7
California	yes	yes	yes	yes	yes	yes	yes		-	yes		yes	9
Colorado	yes	yes	yes	yes	yes	yes	yes		+[1]	yes	yes		9
Connecticut		yes	yes	yes	yes	yes	yes		+				6
Delaware		yes	yes	yes	yes	yes	yes		-	yes	yes	yes	9
Florida		yes	yes	yes	yes	yes	yes	yes	+		yes	yes	9
Georgia				yes	yes	yes	yes		x		yes	yes	6
Hawaii	yes			yes	yes	yes	yes		-	yes	yes	yes	8
Idaho	yes			yes	yes	yes	yes		x		yes		6
Illinois	yes			yes	yes	yes	yes		-	yes	yes	yes	8
Indiana	yes		yes	yes	yes	yes	yes		-	yes	yes	yes	9
Iowa	yes			yes	yes	yes	yes		-	yes	yes	yes	8
Kansas	yes	yes	yes	yes	yes	yes	yes		x	yes	yes	yes[2]	10
Kentucky			yes	yes	yes	yes	yes		-[1]	yes	yes	yes	8
Louisiana	yes	yes	yes	yes	yes	yes	yes		x	yes	yes	yes	10
Maine	yes	yes	yes	yes	yes	yes	yes		x		yes	yes	9
Maryland	yes	yes	yes	yes	yes	yes	yes		-	yes	yes	yes	10
Massachusetts				yes	yes	yes	yes		x	yes	yes		6
Michigan		yes	yes	yes	yes	yes	yes		-	yes	yes	yes	9
Minnesota				yes	yes	yes	yes		+			yes	5
Mississippi	yes	yes	yes	yes	yes	yes	yes		-	yes			8
Missouri		yes	yes	yes	yes	yes	yes		x	yes	yes	yes	9
Montana	yes	yes	yes	yes	yes	yes	yes		+		yes	yes	9
Nebraska	yes			yes	yes	yes	yes		x	yes	yes	yes	8
Nevada	yes			yes	yes	yes	yes		+	yes	yes	yes	8
New Hampshire	yes	yes	yes	yes	yes	yes	yes		x	yes		yes	9
New Jersey	yes	yes	yes	yes	yes	yes	yes		x	yes	yes	yes	10
New Mexico			yes	yes	yes	yes	yes		x	yes	yes	yes	8
New York	yes	yes	yes	yes	yes	yes	yes		x	yes	yes	yes	10
North Carolina	yes	yes	yes	yes	yes	yes	yes		-[1]	yes		yes	9
North Dakota		yes	yes	yes	yes	yes	yes		+[1]			yes	7
Ohio			Yes	yes	yes	yes	yes		-	yes	yes	yes	8
Oklahoma	yes			yes	yes	yes	yes		+		yes	yes[3]	7
Oregon	yes	yes	yes	yes	yes	yes	yes		-	yes	yes	yes	9
Pennsylvania		yes	yes	yes	yes	yes	yes		+	yes	yes	yes	9

TABLE VI (Continued)

Rhode Island	yes		yes	yes	yes	yes	yes		x[1]	yes	yes		8
South Carolina		yes	yes	yes	yes	yes	yes		x[1]	yes		yes	8
South Dakota		yes	yes	yes	yes	yes	yes		+			yes	7
Tennessee	yes	yes	yes	yes	yes	yes	yes	yes	+	yes	yes	yes	11
Texas		yes	yes	yes	yes	yes	yes		-	yes		yes	8
Utah	yes	yes	yes	yes	yes	yes	yes		+	yes	yes	yes	10
Vermont	yes			yes	yes	yes	yes		x		yes	yes	7
Virginia	yes	yes	yes	yes	yes	yes	yes		-	yes	yes	yes	10
Washington	yes			yes	yes	yes	yes		x	yes	yes	yes	8
West Virginia	yes	yes	yes	yes	yes	yes	yes		-	yes	yes	yes	10
Wisconsin	yes	yes	yes	yes	yes	yes	yes		x	yes	yes	yes	10
Wyoming	yes			yes	yes	yes	yes		-		yes		6
NOTE: Totals	33	30	36	50	50	50	50	2	+=14 x=19 -=17	35	38	42	
Percent	66%	60%	72%	100%	100%	100%	100%	4%	+=28% x=38% -=34%	70%	76%	84%	

Total average = 37.8. Total average percent for all categories: 75.6%. Total average percent for categories 1-8: 75.2%. Total average percent for categories 9-11: 76.7%.

*This adjunct category indicates stated exceptions and/or reasons allowed for closed session. + indicates five or fewer; x, six to ten; -, more than ten.

[1]Denotes an encompassing phrase. For example, Alabama's law provides for executive session "when the character or good name of a woman or man is involved." (ALA. CODE tit. 13-1-14-2). Phrases such as this one could be used to allow any number of subjects to be discussed in executive session.

[2]Indicates laws which permit the court to grant equitable relief.

[3]Indicates the only penalty is for smoking in open meeting.

TABLE VII

SUMMARY OF CATEGORIES - PART II THIS STUDY

State	Definitions 12	Minutes 13	Notice 14	Provisions for conduct of executive session 15	Previous score for this study	Total score
Alabama					5	5
Alaska			yes	yes	8	10
Arizona	yes	yes	yes	yes	10	14
Arkansas	yes		yes	yes	7	10
California	yes	yes[1]	yes	yes	9	13
Colorado		yes	yes		9	11
Connecticut	yes	yes	yes	yes	6	10
Delaware	yes	yes	yes	yes[4]	9	13
Florida		yes	yes	yes	9	12
Georgia	yes	yes	yes		6	9
Hawaii	yes	yes	yes	yes	8	12
Idaho	yes	yes	yes	yes	6	10
Illinois	yes	yes	yes	yes	8	12
Indiana	yes	yes	yes	yes	9	13
Iowa		yes[2]	yes	yes	8	11
Kansas	yes	yes	yes	yes	10	14
Kentucky	yes	yes	yes	yes	8	12
Louisiana	yes	yes[3]	yes	yes	10	14
Maine	yes	*	yes	yes	9	12
Maryland	yes	yes	yes	yes	10	14
Masschusetts	yes	yes	yes	yes	6	10
Michigan	yes	yes	yes	yes	9	13
Minnesota		yes		yes	5	7
Mississippi	yes	yes	yes	yes	8	12
Missouri	yes		yes	yes	9	12
Montana	yes	yes			9	11
Nebraska	yes	yes	yes	yes	8	12
Nevada	yes	yes	yes		8	11
New Hampshire	yes	yes	yes	yes	9	13
New Jersey	yes	yes	yes	yes	10	14
New Mexico	yes	yes	yes	yes	8	12
New York	yes	yes[1]	yes	yes	10	14
North Carolina	yes	yes[1]	yes	yes	9	13
North Dakota		yes[1]	yes		7	9
Ohio	yes	yes	yes	yes	8	12
Oklahoma	yes	yes	yes	yes	7	11
Oregon	yes	yes	yes	yes	9	13
Pennsylvania	yes	yes	yes	yes	9	13
Rhode Island	yes	yes	yes	yes	8	12

TABLE VII (Continued)

South Carolina	yes	yes	yes	yes	8	12
South Dakota		yes		yes[4]	7	9
Tennessee	yes	yes	yes	yes	11	15
Texas	yes		yes	yes	8	11
Utah	yes	yes	yes	yes	10	14
Vermont	yes	yes	yes	yes	7	11
Virginia	yes	yes	yes	yes	10	14
Washington	yes		yes		8	10
West Virginia	yes	yes	yes	yes	10	14
Wisconsin	yes	yes	yes	yes	10	14
Wyoming	yes		yes		6	8
NOTE: Total	42	42	46	42		
Percent	84%	84%	92%	84%		

Total average compliance with categories 12-15: 86%. Total average compliance with all 15 categories included in this study: 78.3%.

[1]Minutes are required for executive sessions only.

[2]Wording implies that minutes are to be kept.

[3]Only decisions are required to be kept in minutes.

[4]Provisions for conduct of executive session are unnecessary, since law forbids closed meetings.

TABLE VIII

RANKING OF SCORES - PART II THIS STUDY

State	Score	State	Score
Tennessee	15	Missouri	12
Arizona	14	Nebraska	12
Kansas	14	New Mexico	12
Louisiana	14	Ohio	12
Maryland	14	Rhode Island	12
New Jersey	14	South Carolina	12
New York	14	Colorado	11
Utah	14	Iowa	11
Virginia	14	Montana	11
West Virginia	14	Nevada	11
Wisconsin	14	Oklahoma	11
California	13	Texas	11
Delaware	13	Vermont	11
Indiana	13	Alaska	10
Michigan	13	Arkansas	10
New Hampshire	13	Connecticut	10
North Carolina	13	Idaho	10
Oregon	13	Massachusetts	10
Pennsylvania	13	Washington	10
Florida	12	Georgia	9
Hawaii	12	North Dakota	9
Illinois	12	South Dakota	9
Kentucky	12	Wyoming	8
Maine	12	Minnesota	7
Mississippi	12	Alabama	5

NOTE: Median Score: 12; Mean Score: 11.74.

CHAPTER VI

SUMMARY AND CONCLUSIONS

This study offers encouragement to those individuals and groups that have labored for open government as an essential ingredient in a democracy. While adjustments continue to be made in open-meeting legislation--the so-called "sunshine laws"--the general trend is toward laws that promote greater access to information by the governed from those councils--state, county and local--where sit those who govern.

And though the tide has turned toward openness by governmental bodies, concern should be directed toward a powerful undertow of exceptions and causes for executive session written into the laws which can subvert the purpose of the legislation.

Generally this study found that overall state open-meeting laws are more comprehensive and have stronger enforcement measures than did the open-meeting laws examined by John Adams in his 1974 study. On the average, the laws studied by Adams were 18.8% less effective across the board than those reviewed in this study.

In addition, it was found in this study that an average 86.5% of state open-meeting laws complied with the criteria designed to measure effective construction of such laws. Overall an average of 78.3% compliance was found by this study for all 15 categories of criteria.

Although there has been considerable development in open-meeting legislation in the years between the two studies, much work is left to

be done. In this study as well as in the Adams study, the Tennessee law alone met all the requirements for a strong open-meeting law. When adding the four additional categories, Tennessee's law again met all the requirements in each of the 15 categories. Ten states had a score of 14, one less than Tennessee's perfect score of 15. The three lowest-ranking state laws in descending order were Wyoming, Minnesota and Alabama, with scores of eight, seven, and five, respectively. (The Minnesota finding may seem surprising to some, for that state has long been a leading advocate of proper balance between press and government and today maintains the only functioning Press Council.)

Viewing the legislation from the perspective of average state compliance with each category, in only the four categories that refer to open public bodies at the state, county and local levels were the criteria met by all 50 state laws.

The category of greatest improvement since 1974 was that dealing with provisions for voiding and nullifying action taken at meetings held in violation of the law.

In one category there was a decrease in the number of states found to comply. This was the category which ranked state laws that forbid executive sessions. This study found only two states, Florida and Tennessee, where open-meeting laws prohibit executive sessions. Executive sessions are permitted in 48 of the states and in 36 of those states the law approves of more than five instances when meetings may be legally closed. If the presumption is held that the more open public business is to the public the more effective the legislation, then the findings of this study make it apparent that there is still a serious problem to be resolved in open-meeting legislation. While it is

desirable on the one hand to have all 50 state laws providing for openness in state, county and local public bodies, these provisions have little meaning if, on the other hand, exceptions and causes for executive sessions are so numerous they defeat the purpose of the law. In some states, meetings opened with one provision of the law are closed again with another provision of the same law. Resolution of the value conflict surrounding the exeuctive-session criteria is, today, the category of greatest challenge to the development of strong and comprehensive open-meeting legislation.

There is ample opportunity for further research in the freedom-of-information area. Case studies of ajudication in those instances in which the media have sought relief in the courts for violations would be useful. A study of the attitudes of editors toward existing open-meeting laws and their suggestions for improvements would be fruitful, the author believes.

A few states have written open-meeting laws with unique provisions which warrant study. An Oregon law permits news media to attend executive sessions; New York and Connecticut have commissions which oversee complaints regarding open meetings; one state limits executive sessions to 30 minutes while another requires tape recording of executive sessions subject to judicial review. Studies of these and other innovative approaches to the concerns of open-meeting legislation might lead to a resolution of the conflict surrounding openness and confidentiality.

Also technical advances have and will continue to present opportunities for research. Currently the broadcasting of public meetings and the use of teleconferencing in lieu of public meetings are concerns created by modern technology.

In addition, related legislation such as open-records laws, so-called shield laws and similar matters of concern to both media and concerned citizens offer promise for continuing research.

Finally, there is need for periodic follow-up on the present research. Perhaps every five years it would be useful to plot the direction of legislation as it relates to the data in this study. Such data, of course, should be widely disseminated among the groups most specifically involved: press, bar and government. In all cases the public welfare should be held to be crucial.

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